2009

Greg Child v. Renee Globis : Brief of Appellant

Utah Court of Appeals

Renee Globis; pro se.
Craig C. Halls; Greg Child; attorney for petitioner.

COURT OF APPEALS
STATE OF UTAH

GREG CHILD, Petitioner/Appellee, v. **RENEE GLOBIS,** Respondent/Appellant.	Appellate Case No. 20090486 Trial Court No. 0547-3

BRIEF OF APPELLANT

This is an Appeal from the modification of custody of one minor child between two parents who were never married from the Seventh District Court, Grand County, State of Utah with Honorable Judge Lyle R. Anderson.

Greg Child
Petitioner/Appellee
446 Castle Valley Drive
Moab, Utah 84532
Telephone: 435.259.1984
Facsimile: 435.259.1984

Craig C. Halls, esq.
Attorney for Petitioner
3333 South State Street
Blanding, Utah 84511
Telephone: 435.678.3333
Facsimile: 435.678.3330

Renee Globis, Pro Se
Respondent/Appellant
12118 South Pond Ridge
Draper, Utah 84020
Telephone: 801.243.13[illegible]
Facsimile: 801.[illegible]4625

COURT OF APPEALS
STATE OF UTAH

GREG CHILD, Petitioner/Appellee, v. **RENEE GLOBIS,** Respondent/Appellant.	Appellate Case No. 20090486 Trial Court No. 0547-3

BRIEF OF APPELLANT

This is an Appeal from the modification of custody of one minor child between two parents who were never married from the Seventh District Court, Grand County, State of Utah with Honorable Judge Lyle R. Anderson.

Greg Child
Petitioner/Appellee
446 Castle Valley Drive
Moab, Utah 84532
Telephone: 435.259.1984
Facsimile: 435.259.1984

Craig C. Halls, esq.
Attorney for Petitioner
3333 South State Street
Blanding, Utah 84511
Telephone: 435.678.3333
Facsimile: 435.678.3330

Renee Globis, Pro Se
Respondent/Appellant
12118 South Pond Ridge
Draper, Utah 84020
Telephone: 801.243.1315
Facsimile: 801.521.4625

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Utah Rules Appellate Procedure

Utah Rules of Civil Procedure

Rules of Evidence VI

Statues

Caselaw

CONSTITUTIONAL PROVISIONS, STATUTES & RULES

Utah Rules of Appellate Procedure

Rule 4

(b)(1)(a) a motion for judgment under Rule 50(b) of the Utah Rules of Civil Procedure;

(b)(1)(C) a motion to alter or amend the judgment under Rule 59 of the Utah Rules of Civil Procedure;

(b)(1)(D) a motion for a new trial under Rule 59 of the Utah Rules of Civil Procedure; or

Rule 11

(d)(2) Civil cases. Unless otherwise directed by the appellate court upon sua sponte motion or motion of a party, the clerk of the trial court shall include all of the papers in a civil case as part of the record on appeal.

(e)(2) Transcript required of all evidence regarding challenged finding or conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Neither the court nor the appellee is obligated to correct appellant's deficiencies in providing the relevant portions of the transcript.

(g) Statement of evidence or proceedings when no report was made or when transcript is unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, or if the appellant is impecunious and unable to afford a transcript in a civil case, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection. The statement shall be served on the appellee, who may serve objections or propose amendments within 10 days after service. The statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and, as settled and approved, shall be included by the clerk of the trial court in the record on appeal.

(h) Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated, the parties by stipulation, the trial court, or the appellate court, either before or after the record is transmitted, may direct that the omission or misstatement be corrected and if necessary that a supplemental record be certified and transmitted. The moving party, or the court if it is acting on its own initiative, shall serve on the parties a statement of the proposed changes. Within 10 days after service, any party may serve objections to the proposed changes. All other questions as to the form and content of the record shall be presented to the appellate court.

Rule 12

(b) How presented. Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 42

(e) Subsequent proceedings before Court of Appeals. Upon receipt by the Clerk of the Court of Appeals of the order of transfer and the entry thereof upon the docket of the Court of Appeals, the case shall proceed before the Court of

Appeals to final decision and disposition as in other appellate cases pursuant to these rules.

Utah Rules Civil Procedure

Rule 10

(g) Replacing lost pleadings or papers. If an original pleading or paper filed in any action or proceeding is lost, the court may, upon motion, with or without notice, authorize a copy thereof to be filed and used in lieu of the original.

Rule 50

(b) Motion for judgment notwithstanding the verdict. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than ten days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within ten days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial

Rule 59

(a)(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law. (a)(7) Error in law.

Rule 74

(a) An attorney may withdraw from the case by filing with the court and serving on all parties a notice of withdrawal. The notice of withdrawal shall include the address of the attorney's client and a statement that no motion is pending and no hearing or trial has been set. If a motion is pending or a hearing or trial has been set, an attorney may not withdraw except upon motion and order of the court. The motion to withdraw shall describe the nature of any pending motion and the date and purpose of any scheduled hearing or trial.

(c) If an attorney withdraws other than under subdivision (b), dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, the opposing party shall serve a Notice to Appear or Appoint Counsel on the unrepresented party, informing the party of the responsibility to appear personally or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must be filed with the court. No further proceedings shall be held in the case until 20 days after filing the Notice to Appear or Appoint Counsel unless the unrepresented party waives the time requirement or unless otherwise ordered by the court.

Rules of Evidence

Rule 103

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(b) Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Rule 201. Judicial notice of adjudicative facts.

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts. (b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or the Constitution of the state of Utah, statute, or by these rules, or by other rules applicable in courts of this state. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(a)(3) Character of witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

Rule 502

(b) Communications.

(1) Definition. A communication is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.
(2) General rule of privilege. An individual has a privilege during the person's life to refuse to testify or to prevent his or her spouse or former spouse from testifying as to any confidential communication made by the individual to the spouse during their marriage and to prevent another from disclosing any such confidential communication.
(3) Who may claim the privilege. The privilege may be claimed by the person who made the confidential communication, or by the person's guardian or conservator. The non-communicating spouse to whom the confidential communication was made is presumed to be authorized, during the life of the communicating spouse, to claim the privilege on behalf of the person who made the confidential communication.
(4) Exceptions. No privilege exists under subparagraph (b) of this rule:
(A) Spouses as adverse parties. In any civil proceeding in which the spouses are adverse parties;
(B) Furtherance of crime or tort. As to any communication which was made, in whole or in part, to enable or aid anyone

(i) to commit,
(ii) to plan to commit, or
(iii) to conceal a crime or a tort;

(C) Spouse charged with crime or tort. In a proceeding in which one spouse is charged with a crime or a tort against the person or property of

(ii) a child of either,

Rule 608. Evidence of character and conduct of witness.

Evidence of bias. Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.

Rule 903.

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

.....

Utah Code Annotated/Statutes

Utah Code Ann. § 78A-4-103 (2)(h)(a)

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

..

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

Utah Code Ann. § 30-3-10 (1)(a)(i-vi) (d) (e), (2), (3)

(a) In determining any form of custody, the court shall consider the best interests of the child and, among other factors the court finds relevant, the following:

(i) the past conduct and demonstrated moral standards of each of the parties;

(ii) which parent is most likely to act in the best interest of the child, including allowing the child frequent and continuing contact with the noncustodial parent;

(iii) the extent of bonding between the parent and child, meaning the depth, quality, and nature of the relationship between a parent and child; and

(iv) those factors outlined in Section 30-3-10.2.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a

disability may rebut any evidence, presumption, or inference arising from the disability by showing that:

(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or

(ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the child at issue.

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a parent due to a disability, as defined in Section **57-21-2**, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

Utah Code Ann. § 30-3-10.1 (1)(a-e)

(1) "Joint legal custody":

(a) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;

(b) may include an award of exclusive authority by the court to one parent to make specific decisions;

(c) does not affect the physical custody of the child except as specified in the order of joint legal custody;

(d) is not based on awarding equal or nearly equal periods of physical custody of and access to the child to each of the parents, as the best interest of the child often requires that a primary physical residence for the child be designated; and

(e) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

Utah Code Ann. § 30-3-10.3 (1)(a)(d)(e), (3), (4), (6), (7)

(1) Unless the court orders otherwise, before a final order of joint legal custody or joint physical custody is entered both parties shall attend the mandatory course for divorcing parents, as provided in Section 30-3-11.3, and present a certificate of completion from the course to the court.

(a) either the county of residence of the child, until altered by further order of the court, or the custodian who has the sole legal right to determine the residence of the child;

(d) provisions to minimize disruption of the child's attendance at school and other activities, his daily routine, and his association with friends; and

(e) as necessary, the remaining parental rights, privileges, duties, and powers to be exercised by the parents solely, concurrently, or jointly.

(3) The court shall, where possible, include in the order the terms of the parenting plan provided in accordance with Section 30-3-10.8.
(4) Any parental rights not specifically addressed by the court order may be exercised by the parent having physical custody of the child the majority of the time.
(6) An order of joint legal custody, in itself, is not grounds for modifying a support order.
(7) An order of joint legal or physical custody shall require a parenting plan incorporating a dispute resolution procedure the parties agree to use before seeking enforcement or modification of the terms and conditions of the order of joint legal or physical custody through litigation, except in emergency situations requiring ex parte orders to protect the child.

Utah Code Ann. § 30-3-10.4 (1)(a) (c)(i)(ii), (2-5)

(1) On the petition of one or both of the parents, or the joint legal or physical custodians if they are not the parents, the court may, after a hearing, modify or terminate an order that established joint legal or physical custody if:

(a) the verified petition or accompanying affidavit initially alleges that admissible evidence will show that the circumstances of the child or one or both parents or joint legal or physical custodians have materially and substantially changed since the entry of the order to be modified;
(c) (i) both parents have complied in good faith with the dispute resolution procedure in accordance with Subsection 30-3-10.3(7); or

(ii) if no dispute resolution procedure is contained in the order that established joint legal or physical custody, the court orders the parents to participate in a dispute resolution procedure in accordance with Subsection 30-3-10.2(5) unless the parents certify that, in good faith, they have utilized a dispute resolution procedure to resolve their dispute.

(2) (a) In determining whether the best interest of a child will be served by either modifying or terminating the joint legal or physical custody order, the court shall, in addition to other factors the court considers relevant, consider the factors outlined in Section 30-3-10 and Subsection 30-3-10.2(2).

(b) The court shall make specific written findings on each of the factors relied upon stating:

(i) a material and substantial change of circumstance has occurred; and

(ii) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the child.

(c) The court shall give substantial weight to the existing joint legal or physical custody order when the child is thriving, happy, and well-adjusted.

(3) The court shall, in every case regarding a motion for termination of a joint legal or physical custody order, consider reasonable alternatives to preserve the existing order in accordance with Subsection 30-3-10(1)(b). The court may modify the terms and conditions of the existing order in accordance with Subsection 30-3-10(5) and may order the parents to file a parenting plan in accordance with this chapter.

(4) A parent requesting a modification from sole custody to joint legal custody or joint physical custody or both, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan with the petition to modify in accordance with Section 30-3-10.8.

(5) If the court finds that an action under this section is filed or answered frivolously and in a manner designed to harass the other party, the court shall assess attorney fees as costs against the offending party.

UCA § 30-3-10.7. (2) (3)

(2) "Parenting plan" means a plan for parenting a child, including allocation of parenting functions, which is incorporated in any final decree or decree of modification including an action for dissolution of marriage, annulment, legal, separation, or paternity.

(3) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) attending to the daily needs of the child, such as feeding, clothing, physical care, grooming, supervision, health care, day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) attending to adequate education for the child, including remedial or other education essential to the best interest of the child;

(d) assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and family social and economic circumstances; and

(f) providing for the financial support of the child.

Utah Code Ann. § 30-3-10.8 (1-7)

(1) In any proceeding under this chapter, including actions for paternity, any party requesting joint custody, joint legal or physical custody, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan at the time of the filing of their original petition or at the time of filing their answer or counterclaim.
(2) In proceedings for a modification of custody provisions or modification of a parenting plan, a proposed parenting plan shall be filed and served with the petition to modify, or the answer or counterclaim to the petition to modify.

(3) A party who files a proposed parenting plan in compliance with this section may move the court for an order of default to adopt the plan if the other party fails to file a proposed parenting plan as required by this section.

(4) Either party may file and serve an amended proposed parenting plan according to the rules for amending pleadings.

(5) The parent submitting a proposed parenting plan shall attach a verified statement that the plan is proposed by that parent in good faith.

(6) Both parents may submit a parenting plan which has been agreed upon. A verified statement, signed by both parents, shall be attached.

(7) If the parents file inconsistent parenting plans, the court may appoint a guardian ad litem to represent the best interests of the child, who may, if necessary, file a separate parenting plan reflecting the best interests of the child.

Utah Code Ann. § 30-3-10.9 (1)(a-g), (2-4)(a)(e), (5), (6-9)

(1) The objectives of a parenting plan are to:
(a) provide for the child's physical care;
(b) maintain the child's emotional stability;
(c) provide for the child's changing needs as the child grows and matures in a way that minimizes the need for future modifications to the parenting plan;
(d) set forth the authority and responsibilities of each parent with respect to the child consistent with the definitions outlined in this chapter;
(e) minimize the child's exposure to harmful parental conflict;
(f) encourage the parents, where appropriate, to meet the responsibilities to their minor children through agreements in the parenting plan rather than relying on judicial intervention; and
(g) protect the best interests of the child.

(2) The parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child, and provisions addressing notice and parent-time responsibilities in the event of the relocation of either party. It may contain other provisions comparable to those in Sections **30-3-5** and **30-3-10.3** regarding the welfare of the child.
(3) A process for resolving disputes shall be provided unless precluded or limited by statute. A dispute resolution process may include:
(a) counseling;
(b) mediation or arbitration by a specified individual or agency; or
(c) court action.
(4) In the dispute resolution process:
(a) preference shall be given to the provisions in the parenting plan;

(e) if the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court may award attorney's fees and financial sanctions to the prevailing parent;
(f) the district court shall have the right of review from the dispute resolution process; and
(g) the provisions of this Subsection (4) shall be set forth in any final decree or order.

(5) The parenting plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care

and growth of the children in these specified areas or in other areas into their plan, consistent with the criteria outlined in Subsection 30-3-10.7(2) and Subsection (1). Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.
(7) When mutual decision-making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.
(8) The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions.
(9) If a parent fails to comply with a provision of the parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision of the parenting plan or a child support order may result in a finding of contempt of court.

Utah Code Ann. § 30-3-10.10 (3)(4)
(3) If the court orders parent-time and a protective order or civil stalking injunction is still in place, it shall consider whether to order the parents to conduct parent-time pick-up and transfer through a third party. The parent who is the stated victim in the order or injunction may submit to the court, and the court shall consider, the name of a person considered suitable to act as the third party.
(4) If the court orders the parents to conduct parent-time through a third party, the parenting plan shall specify the time, day, place, manner, and the third party to be used to implement the exchange.

Utah Code Ann. § 30-3-11.3 (4)

(4) The court may require unmarried parents to attend this educational course when those parents are involved in a visitation or custody proceeding before the court.
(5) The mandatory course shall instruct both parties:
(a) about divorce and its impacts on:
(i) their child or children;
(ii) their family relationship; and
(iii) their financial responsibilities for their child or children; and

(b) that domestic violence has a harmful effect on children and family relationships.

Utah Code Ann. § 30-3-11.4 (1-4), (6), (11)

(1) There is established a mandatory divorce orientation course for all parties with minor children who file a petition for temporary separation or for a divorce. A couple with no minor children are not required, but may choose to attend the course. The purpose of the course shall be to educate parties about the divorce process and reasonable alternatives.

(2) A petitioner shall attend a divorce orientation course no more than 60 days after filing a petition for divorce.

(3) The respondent shall attend the divorce orientation course no more than 30 days after being served with a petition for divorce.

(4) The clerk of the court shall provide notice to a petitioner of the requirement for the course, and information regarding the course shall be included with the petition or motion, when served on the respondent.

(6) The course may be provided in conjunction with the mandatory course for divorcing parents required by Section 30-3-11.3.

(11) Both parties shall attend a divorce orientation course before a divorce decree may be entered, unless waived by the court. A certificate of completion constitutes evidence to the court of course completion by the parties.

Utah Code Ann. § 30-3-12. Courts to Exercise Family Counseling Matters.

Each district court of the respective judicial districts, while sitting in matters of divorce, annulment, separate maintenance, child custody, alimony and support in connection therewith, child custody in habeas corpus proceedings, and adoptions, shall exercise the family counseling powers conferred by this act.

Utah Code Ann. § 30-3-32

(1) It is the intent of the Legislature to promote parent-time at a level consistent with all parties' interests.

(2)(a) A court shall consider as primary the safety and well-being of the child and the parent who is the victim of domestic or family violence.

(b) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:

(i) it is in the best interests of the child of divorcing, divorced, or

adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(ii) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with his child consistent with the child's best interests; and

(iii) it is in the best interests of the child to have both parents actively involved in parenting the child.

(c) An order issued by a court pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act shall be considered evidence of real harm or substantiated potential harm to the child.

(3) For purposes of Sections 30-3-32 through 30-3-37:

(a) "Child" means the child or children of divorcing, separating, or adjudicated parents.

(b) "Christmas school vacation" means the time period beginning on the evening the child gets out of school for the Christmas or winter school break until the evening before the child returns to school.

(c) "Extended parent-time" means a period of parent-time other than a weekend, holiday as provided in Subsections 30-3-35(2)(f) and (2)(g), religious holidays as provided in Subsections 30-3-33(3) and (17), and "Christmas school vacation."

(d) "Surrogate care" means care by any individual other than the parent of the child.

(e) "Uninterrupted time" means parent-time exercised by one parent without interruption at any time by the presence of the other parent.

(f) "Virtual parent-time" means parent-time facilitated by tools such as telephone, email, instant messaging, video conferencing, and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits between a noncustodial parent and a child or between a child and the custodial parent when the child is staying with the noncustodial parent. Virtual parent-time is designed to supplement, not replace, in-person parent-time.

(4) If a parent relocates because of an act of domestic violence or family violence by the other parent, the court shall make specific findings and orders with regards to the application of Section 30-3-37.

Utah Code Ann. § 30-3-33 Advisory Guidelines.

In addition to the parent-time schedules provided in Sections 30-3-35 and

30-3-35.5, the following advisory guidelines are suggested to govern all parent-time arrangements between parents.

(1) Parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution.
(2) The parent-time schedule shall be utilized to maximize the continuity and stability of the child's life.
(3) Special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the parent-time schedule.
(4) The responsibility for the pick up, delivery, and return of the child shall be determined by the court when the parent-time order is entered, and may be changed at any time a subsequent modification is made to the parent-time order.
(5) If the noncustodial parent will be providing transportation, the custodial parent shall have the child ready for parent-time at the time the child is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time the child is returned.
(6) If the custodial parent will be transporting the child, the noncustodial parent shall be at the appointed place at the time the noncustodial parent is to receive the child, and have the child ready to be picked up at the appointed time and place, or have made reasonable alternate arrangements for the custodial parent to pick up the child.
(7) Regular school hours may not be interrupted for a school-age child for the exercise of parent-time by either parent.
(8) The court may make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the parent-time allowed to the noncustodial parent but shall not diminish the standardized parent-time provided in Sections 30-3-35 and 30-3-35.5.
(9) The court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time.
(10) Neither parent-time nor child support is to be withheld due to either parent's failure to comply with a court-ordered parent-time schedule.
(11) The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and

community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully.
(12) The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency.
(13) Each parent shall provide the other with his current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change.
(14) Each parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(a) the best interests of the child;

(b) each parent's ability to handle any additional expenses for virtual parent-time; and,

(b) any other factors the court considers material.

(15) Parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able to transport the children, to provide the child care. Child care arrangements existing during the marriage are preferred as are child care arrangements with nominal or no charge.
(16) Each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise.
(17) Each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.
(18) If the child is on a different parent-time schedule than a sibling, based on Sections **30-3-35** and **30-3-35.5**, the parents should consider if an upward deviation for parent-time with all the minor children so that parent-time is uniform between school aged and nonschool aged children, is appropriate.

Utah Code Ann. § 30-3-35 Minimum schedule for parent-time for children 5 to 18 years of age.

(1) The parent-time schedule in this section applies to children 5 to 18 years of age.
(2) If the parties do not agree to a parent-time schedule, the following schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled.

(a)(i)(A) One weekday evening to be specified by the noncustodial parent or the court, or Wednesday evening if not specified, from 5:30 p.m. until 8:30 p.m.;

(B) at the election of the noncustodial parent, one weekday from the time the child's school is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection (2)(a)(i); or

(C) at the election of the noncustodial parent, if school is not in session, one weekday from approximately 9 a.m., accommodating the custodial parent's work schedule, until 8:30 p.m. if the noncustodial parent is available to be with the child, unless the court directs the application of Subsection (2)(a)(i)(A) or (2)(a)(i)(B).

(ii) Once the election of the weekday for the weekday evening parent-time is made, it may not be changed except by mutual written agreement or court order.

(b)(i)(A) Alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;

(B) at the election of the noncustodial parent, from the time the child's school is regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of Subsection (2)(b)(i)(A); or

(C) at the election of the noncustodial parent, if school is not in session, on Friday from approximately 9 a.m., accommodating the custodial parent's work schedule, until 7 p.m. on Sunday, if the noncustodial parent is available to be with the child unless the court directs the application of Subsection (2)(b)(i)(A) or (2)(b)(i)(B).

(ii) A step-parent, grandparent, or other responsible adult designated by the noncustodial parent, may pick up the child if the custodial parent is aware of the identity of the individual, and the parent will be with the child by 7 p.m.

(iii) Elections should be made by the noncustodial parent at the time of entry of the divorce decree or court order, and may be changed by mutual

agreement, court order, or by the noncustodial parent in the event of a change in the child's schedule.

(iv) Weekends include any "snow" days, teacher development days, or other days when school is not scheduled and which are contiguous to the weekend period.

(c) Holidays include any "snow" days, teacher development days, or other days when school is not scheduled, contiguous to the holiday period, and take precedence over the weekend parent-time. Changes may not be made to the regular rotation of the alternating weekend parent-time schedule; however, birthdays take precedence over holidays and extended parent-time, except Mother's Day and Father's Day; birthdays do not take precedence over uninterrupted parent-time if the parent exercising uninterrupted time takes the child away from that parent's residence for the uninterrupted extended parent-time.

(d) If a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day.

(e)(i) If a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period.

(ii)(A) At the election of the noncustodial parent, parent-time over a scheduled holiday weekend may begin from the time the child's school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend; or

(B) at the election of the noncustodial parent, if school is not in session, parent-time over a scheduled holiday weekend may begin at approximately 9 a.m., accommodating the custodial parent's work schedule, the first day of the holiday weekend until 7 p.m. on the last day of the holiday weekend, if the noncustodial parent is available to be with the child unless the court directs the application of Subsection (2)(e)(ii)(A).

(iii) A step-parent, grandparent, or other responsible individual designated by the noncustodial parent, may pick up the child if the custodial parent is aware of the identity of the individual, and the parent will be with the child by 7 p.m.

(iv) Elections should be made by the noncustodial parent at the time of the divorce decree or court order, and may be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the child's schedule.

(f) In years ending in an odd number, the noncustodial parent is entitled

to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) Martin Luther King, Jr. beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) spring break beginning at 6 p.m. on the day school lets out for the holiday until 7 p.m. on the Sunday before school resumes;

(iv) July 4 beginning 6 p.m. the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option of the parent exercising the holiday;

(v) Labor Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vi) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vii) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and

(viii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) including Christmas Eve and Christmas Day until 1 p.m. on the day halfway through the holiday, if there are an odd number of days for the holiday period, or until 7 p.m. if there are an even number of days for the holiday period, so long as the entire holiday is equally divided.

(g) In years ending in an even number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) President's Day beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) Memorial Day beginning at 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iv) July 24 beginning at 6 p.m. on the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option

of the parent exercising the holiday;

(v) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(vi) Halloween on October 31 or the day Halloween is traditionally celebrated in the local community from after school until 9 p.m. if on a school day, or from 4 p.m. until 9 p.m.;

(vii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m.; and

(viii) the second portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b), beginning 1 p.m. on the day halfway through the holiday, if there are an odd number of days for the holiday period, or at 7 p.m. if there are an even number of days for the holiday period, so long as the entire Christmas holiday is equally divided.

(h) The custodial parent is entitled to the odd year holidays in even years and the even year holidays in odd years.

(i) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday.

(j) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday.

(k) Extended parent-time with the noncustodial parent may be:

(i) up to four weeks consecutive at the option of the noncustodial parent, including weekends normally exercised by the noncustodial parent, but not holidays;

(ii) two weeks shall be uninterrupted time for the noncustodial parent; and

(iii) the remaining two weeks shall be subject to parent-time for the custodial parent for weekday parent-time but not weekends, except for a holiday to be exercised by the other parent.

(l) The custodial parent shall have an identical two-week period of uninterrupted time during the children's summer vacation from school for purposes of vacation.

(m) Both parents shall provide notification of extended parent-time or vacation weeks with the child at least 30 days in advance to the other parent and if notification is not provided timely the complying parent may determine the schedule for extended parent-time for the non-complying parent.

(n) Telephone contact shall be at reasonable hours and for a reasonable duration.

(o) Virtual parent-time, if the equipment is reasonably available and the parents reside at least 100 miles apart, shall be at reasonable hours and for

reasonable duration, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(i) the best interests of the child;

(ii) each parent's ability to handle any additional expenses for virtual parent-time; and

(iii) any other factors the court considers material.

(3) Any elections required to be made in accordance with this section by either parent concerning parent-time shall be made a part of the decree and made a part of the parent-time order.

(4) Notwithstanding Subsection (2)(e)(i), the Halloween holiday may not be extended beyond the hours designated in Subsection (2)(g)(vi).

Utah Code Ann. § 30-3-37 Relocation.

(1) For purposes of this section, "relocation" means moving from the state or 150 miles or more from the residence specified in the court's decree.

(2) The relocating parent shall provide, if possible, 60 days advance written notice of the intended relocation to the other parent. The written notice of relocation shall contain statements affirming the following:

(a) the parent-time provisions in Subsection (5) or a schedule approved by both parties will be followed; and

(b) neither parent will interfere with the other's parental rights pursuant to court ordered parent-time arrangements, or the schedule approved by both parties.

(3) The court may, upon motion of any party or upon the court's own motion, schedule a hearing with notice to review the notice of relocation and parent-time schedule as provided in Section 30-3-35 and make appropriate orders regarding the parent-time and costs for parent-time transportation.

(4) In determining the parent-time schedule and allocating the transportation costs, the court shall consider:

(a) the reason for the parent's relocation;

(b) the additional costs or difficulty to both parents in exercising parent-time;

(c) the economic resources of both parents; and

(d) other factors the court considers necessary and relevant.

(5) Unless otherwise ordered by the court, upon the relocation, as defined in Subsection (1), of one of the parties the following schedule shall be the minimum requirements for parent-time with a school-age child:

(a) in years ending in an odd number, the child shall spend the following holidays with the noncustodial parent:

(i) Thanksgiving holiday beginning Wednesday until Sunday; and

(ii) Spring break, if applicable, beginning the last day of school before the holiday until the day before school resumes;

(b) in years ending in an even number, the child shall spend the following holidays with the noncustodial parent:

(i) the entire winter school break period; and

(ii) the Fall school break beginning the last day of school before the holiday until the day before school resumes;

(c) extended parent-time equal to 1/2 of the summer or off-track time for consecutive weeks. The children should be returned to the custodial home no later than seven days before school begins; however, this week shall be counted when determining the amount of parent-time to be divided between the parents for the summer or off-track period; and

(d) at the option and expense of the noncustodial parent, one weekend per month.

(6) In the event finances and distance preclude the exercise of minimum parent-time for the noncustodial parent during the school year, the court should consider awarding more time for the noncustodial parent during the summer time if it is in the best interests of the children.

(7) Upon the motion of any party, the court may order uninterrupted parent-time with the noncustodial parent for a minimum of 30 days during extended parent-time, unless the court finds it is not in the best interests of the child. If the court orders uninterrupted parent-time during a period not covered by this section, it shall specify in its order which parent is responsible for the child's travel expenses.

(8) Unless otherwise ordered by the court the relocating party shall be responsible for all the child's travel expenses relating to Subsections (5)(a) and (b) and 1/2 of the child's travel expenses relating to Subsection (5)(c), provided the noncustodial parent is current on all support obligations. If the noncustodial parent has been found in contempt for not being current on all support obligations, the noncustodial parent shall be responsible for all of the child's travel expenses under Subsection (5), unless the court rules otherwise. Reimbursement by either responsible party to the other for the child's travel expenses shall be made within 30 days of receipt of documents detailing those expenses.

(9) The court may apply this provision to any preexisting decree of divorce.

(10) Any action under this section may be set for an expedited hearing.

(11) A parent who fails to comply with the notice of relocation in Subsection (2) shall be in contempt of the court's order.

Establishing Court Ordered Paternity: A Guide for Unmarried Parents.

Case Law

Utah law makes clear that a determination of whether substantial and material changes have occurred is a fact-intensive legal determination that is presumed valid and is reviewed for abuse of discretion.
See Young v. Young,
2009 UT App 3, ¶ 4, 201 P.3d 301.
DOYLE v. DOYLE, 2009 UT App 306, 313

Section 30-3-10.4 allows a trial court to terminate an order of joint legal custody if it determines "that the joint legal custody order is unworkable or inappropriate under existing circumstances." Utah Code Ann. § 30-3-10.4(3) (2007). It then mandates that the court "enter an order of sole legal custody" and make decisions with respect to "[a]ll related issues." Id. (emphasis added). We agree that section 30-3-10.4 is a joint "legal" custody statute, see Thronson v. Thronson, 810 P.2d 428, 429-33 (Utah Ct.App. 1991), but explicit in its terms is the direction to trial courts to address "[a]ll related issues," Utah Code Ann. § 30-3-10.4(3), one of which is obviously physical custody, see Catherine R. Albiston, Eleanor E. Maccoby & Robert R. Mnookin, Does Joint Legal Custody Matter?, 2 Stan. L. & Pol'y Rev. 167, 168 (1990) ("There are actually three aspects of joint custody: the legal custody agreement, the physical custody agreement, and the actual residential arrangement for the child.").

¶ 22 Huish also argues that the trial court failed to address certain factors set forth in rule 4-903 of the Code of Judicial Administration, including the duration of the initial physical custody arrangement and child-parent bonding, in determining that a change in physical custody was warranted. In its Finding 11, the trial court stated: "The Court has considered several factors, including the factors set forth in

[rule 4-903], in determining custody. Where no findings are made with respect to a particular factor, the Court finds that the factor is not significant or weighty in this case."
"Although the court considers many factors, each is not on equal footing. Generally, it is within the trial court's discretion to determine, based on the facts before it and within the confines set by the appellate courts, where a particular factor falls within the spectrum of relative importance and to accord each factor its appropriate weight."
Hudema v. Carpenter, 1999 UT App 290, ¶ 26,
989 P.2d 491. Given the nearly equal parenting time enjoyed by the parties over the child's life and expert testimony establishing that the parties were equally involved in raising the child, we agree with the trial court that, in this case, the factors that Huish claims are of pivotal significance — the duration of the original physical custody decree and child-parent bonding — are not dispositive.

¶ 23 Munro's efforts to modify the original custody arrangement began after Huish remarried and stated her intention to move with the child and her new husband to Kwajalein, a remote atoll 2100 nautical miles southwest of Honolulu. On the first day of trial, after prodding by the trial court, [fn2] Huish advised the court that she had reconsidered her intended move and had decided to stay in Utah. In its Finding 8, the trial court found that these facts constituted an additional basis for finding changed circumstances. Huish argues that because she changed her mind about the move, it cannot constitute a change of circumstances warranting a potential change of custody. We frankly doubt that a party can express an intent to do something that would so clearly constitute a change in circumstances, then at the eleventh hour change her mind about it and later assert that because she did not follow through on her expressed intent, there is no actual change in circumstances warranting the court's considering the child's best interests. But given our conclusion that the unworkability of the original custody decree is enough to satisfy the changed-circumstances test, we need not resolve this issue.
HUISH v. MUNRO, 2008 UT App 283

191 P.3d 1242

Before modifying a custody order, the court
conducts a bifurcated inquiry to determine, first, if there has
been a substantial and material change in the circumstances upon
which the award was based, and, if so, whether a modification is
in the best interests of the child.
Page 498
See Utah Code Ann. § 30-3-10.4
(1998);[fn6] Elmer v. Elmer, 776 P.2d 599, 602 (Utah 1989); Sigg v. Sigg, 905 P.2d 908, 912 & n. 5 (Utah Ct. App. 1995). The required finding of changed circumstances promotes the policies of preserving stability in the child's relationships and preventing the burden on the parties and courts of successive adjudications. See Elmer, 776 P.2d at 602. Consequently, the court generally may not consider evidence of the child's best interests until it finds changed circumstances. See Wright v. Wright, 941 P.2d 646, 650-51 (Utah Ct. App. 1997). However, when a custody order is entered pursuant to a stipulated agreement, rather than a prior adjudication of the child's best interests, "the res judicata policy underlying the changed-circumstances rule is at a particularly low ebb." Elmer, 776 P.2d at 603. See id. at 605.

¶ 23 In this case, the trial court ruled there was a substantial and material change of circumstances concerning Jackson, Hudema, and Carpenter. The court based this determination on various factual findings, including that, subsequent to the original custody order, both parents had remarried and moved to new communities separated by a distance that prohibited Jackson's daily contact with both parents, and Jackson had begun school, making extended periods of visitation unworkable during most of the year. In light of these facts, we conclude the court did not abuse its discretion in finding changed circumstances.
HUDEMA v. CARPENTER, 1999 UT App 290
989 P.2d 491, 497-98

We will uphold a trial court's decision to modify a divorce decree if it is within the range of sound discretion.[fn1] See Crouse v. Crouse, 817 P.2d 836, 838 (Utah App. 1991). The trial court determined that the children should be removed from the

custody of their mother and placed in their father's custody if — but only if — Alicia were to move beyond the boundaries of Summit County, Utah.[fn2] The focus of the trial court's analysis and decision, then, was not on the parties' respective parenting skills.[fn3] Instead, the court's order can only be taken to mean that the trial court believed that the children's domicile in Summit County is so essential to their well-being that removal from that community would be more detrimental to them than separating them from their custodial parent — the person who has been primarily responsible for their day-to-day care for the entirety of their lives. While such a conclusion is not inherently impossible, a factor of considerable importance in determining the best interest of children is the maintenance of continuity in their lives, and removing children from their existing custodial placement
Page 723
undercuts that policy.[fn4] See, e.g., Hirsch v. Hirsch, 725 P.2d 1320, 1323 (Utah 1986) (Zimmerman, J., concurring); Hutchison v. Hutchison, 649 P.2d 38, 41 (Utah 1982); Nielsen v. Nielsen, 620 P.2d 511, 512 (Utah 1980); In re Cooper, 17 Utah 2d 296, 298-99, 410 P.2d 475, 476 (1966); In re Application of Conde, 10 Utah 2d 25, 29, 347 P.2d 859, 861 (1959); Rosendahl v. Rosendahl, 876 P.2d 870, 873 (Utah App.), cert. denied, 883 P.2d 1359 (Utah 1994); Cummings v. Cummings, 821 P.2d 472, 478-79 (Utah App. 1991); Moon v. Moon, 790 P.2d 52, 54 (Utah App. 1990). Therefore, unless there were compelling evidence that residing in Summit County, Utah, would be better for the children than allowing them to continue to reside with their life-long primary caregiver, we would conclude that the trial court exceeded the exercise of sound discretion in entering the order before us.
LARSON v. LARSON, 888 P.2d 719, 722 (Utah App. 1994)

In Larson, this court reversed a trial court's custody modification, concluding that allowing children to remain in their life-long community and maintain a relationship with their extended family is insufficient justification for removing children from the custody of their primary caregiver. See id. at 722, 725-26. Notably, in Larson there was no evidence of interference with visitation;

in fact, the custodial parent had "been extremely flexible in coordinating [the noncustodial parent's] visitation." Id. at 725. This case is therefore distinguishable from Larson because the trial court here, as in Sigg, "arrange[d] custody in a way that fosters a relationship with both parents." See Sigg, 905 P.2d at 917.
HANSON v. HANSON, 2009 UT App 365, 368

STATEMENT OF JURISDICTION

Appellant contests the Order Re: Petition to Modify Order of Judge Lyle R. Anderson, Seventh Judicial District Court, issued on April 27, 2009, as a matter of right pursuant to Utah Rules of Appellate Procedure 11(e)(2), Rule 12(b), Utah Rules of Civil Procedure 59(a)(6), (a)(7), and Utah Code Annotated § 30-3-10, and the Utah Advisory Guidelines for Unmarried Parents.

This Court of Appeals has jurisdiction over this appeal under Ut. R. C. P. § 78-4-103 (2)(h). This case was filed to the Utah Court of Appeals pursuant to Rules of Appellate Procedure 4 (b)(1), (A)(B)(C)(D). This case was transferred to the Court of Appeals on October 26, 2009, pursuant to Ut. Rule of App. P. 42 (e) and Utah Rules Civil Procedure 11(d)(2) & Rule 50(b).

ISSUES PRESENTED FOR REVIEW

Appellant presents the following issues for review:

Did the trial court err in finding that a substantial change of circumstance had occurred in the custody order it issued on February 2009, as compared to its August 2007 Judgment?

Assuming that a substantial change of circumstances had occurred, did the trial court err by failure to properly apply the statutory procedure for terminating its joint legal custody of July 2008, and prior, August 2007 orders, that were

dissolved; and then granted Petitioner sole legal and sole physical custody of the minor child?

Did the trial court's repeated failure to equitably apply the Utah Rules of Civil Procedure and the Rules of Evidence with Respondent, and result in deprivation of due process?

Did the trial court err in finding that granting Petitioner sole custody and ordering Respondent to bear the entire cost of parent-time was in the best interest of the child?

Is the Respondent entitled to an award of Attorney's fees and costs associated with this appeal, and the award of fees and cost that the trial court first granted and then revoked, and any other irrevocable fees and damages caused by lack of direction of authorities and procedure?

STATEMENT OF THE CASE

This matter stems from a dispute over custody of the minor child, Ariann Lucinda Child, born August 9, 2004. The Parties were never married. Petitioner filed a 'Verified Petition for Paternity, Custody, and Related Matters' on January 20, 2005, (Exhibit 2), without a parenting plan.

On October 30, 2007, the trial court issued a custody and parent-time order granting the Parties joint legal custody, with Respondent having sole physical

custody and Petitioner having standard parent-time with the minor child, in addition, to one overnight per week. (Exhibit 3, 'Order,' p. 2, ¶ 2, 'Findings of Fact', p. 1, ¶ (a), p. 5 ¶ 10, p.7 ¶ 14).

On or about February 28, 2008, Respondent informed Petitioner of her intent to move to Salt Lake City in search of more lucrative employment. (Exhibit 4). The following day, Petitioner filed a motion to modify the October 30, 2007 parent-time order in light of the proposed relocation of Respondent and the minor child. (Exhibit 5, 'Petition to Modify,' and 'Affidavit'); Respondent proffered her answers to Petitioner's interrogatories. (Exhibit 5, 'Answers' and 'Response to Interrogatories'). Respondent and the minor child moved to Salt Lake City in April of 2008.

The trial court held a semi-final trial hearing on Petitioner's motion to modify the existing parent-time order on July 9, 2008, whereat the Parties reached a stipulated agreement as to the parent-time schedule. (Exhibit 6). The Court made a minute entry decision regarding the parent-time schedule, child support, and attorney's fees issues. (Exhibit 7, 'Minute Entry for 7/09/08 Hearing, p.14). Respondent prepared a Proposed Order and Findings as ordered by the trial court. (Ex. 6, 'Letter to Petitioner's Counsel').

On September 29, 2008, Respondent submitted the proposed Findings, Conclusions and Order to the trial court for entry into the record. (Exhibit 8). On October 6, 2008, Petitioner filed an objection to the proposed order (Exhibit 9), and moved to set aside the stipulated agreement that was entered at the hearing on July 10, 2008. (Exhibit 10). Respondent's counsel moved to withdraw for ethical reasons filed on October 28, 2008, and followed standard protocol with a motion to stay proceedings on October 10, 2008, in light of Petitioner's requests for re-opening the trial. (Ex. 10). The trial court ordered a 'temporary orders hearing' on October 27, 2008 without offering Respondent due process to prepare for a hearing without counsel. (U.C.R.P. 74 (a), (b)), and (Ex. 11, 'Order').

Hence, another bench trial was held on November 18, 2008, to address Petitioner's motion to set aside the July 10, 2008 Order. (Exhibit 11). The trial court again made rulings regarding the parent-time schedule, the transportation of the minor child between Moab and Salt Lake, and various child support issues. (Ex. 7, 'Minute Entry, Hearing,' p. 16). Petitioner was instructed to prepare an order and findings but never did. Instead, Petitioner filed a series of motions to compel discovery and expedite the proceedings. (Exhibit 12).

The third bench trial in less than a year was held on February 20, 2009. (Ex. 7, 'Minute Entry, Trial,' p. 17). The trial court withheld a final determination at

the hearing and instructed the parties to prepare written closing arguments. On March 13, 2009, Petitioner filed another motion to reopen the hearing and submitted additional documents and evidence to the court. (Exhibit 13).

On April 7, 2009, the trial court issued a 'Memorandum Decision' terminating joint legal custody and awarding Petitioner sole legal and physical custody of the minor child. (Exhibit 14). On April 27, 2009, the Order's, Findings and Conclusions terminating joint legal custody and Respondent's physical custody of the minor child were entered in the record. (Exhibit 15). Respondent filed an objection to the order's and findings on April 28, 2009 (Exhibit 16), and a notice of appeal on May 27, 2009. (Exhibit 17).

Relevant Facts with Citation to the Record

The Record on Appeal

"The duty to marshal the evidence "`requires an appellant to marshal all of the facts used to support the trial court's finding and then show that these facts cannot possibly support the conclusion reached by the trial court, even when viewed in the light most favorable to the Appellee.'" The record shows that even in the most favorable to Appellee and the preservation of the trial court's ruling, Appellee had no cause of action against Appellant and that the trial court erred in

advocating a change of custody based on the previous order and findings, including the entire record.

From the beginning, a 'Verified Petition for Paternity, Custody, and Related Matters' was filed on January 20, 2009 by Petitioner and his counsel in absence of a Parenting Plan as required by UCA § 30-3-10.8 (1). This submittal, which was notorized and signed by Petitioner's attorney, stipulated to several related issues in resolving the disputes between Appellant and Appelee. Appelee and Appellant were never married, Appellant is the primary caretaker of the minor child and that Appellant and Appelee had stipulated to *Joint Legal Custody*, Appellee and Appellant are both self-employed, Appellee is ordered to pay child support in accordance to Utah Civil Liability for Support Act, Appelee is entitled to liberal parent time, (among other issues that are not at question in this matter, (Ex. 2, ¶ 6, 7, 8, 9, 10, 16). There were a few stipulations that were not agreed upon by Appellant which were 1, 15, and 25. After this filing, two years passed without an order to submit or signed order from the court, however, there were three notices of intent to dismiss from the district court. Finally, there was an Order Re: Petitioner's Motion for Appointment of Mediator and to Set Mediation Deadline, whereas mediation occurred on June 22, 2007. The Mediation Disposition was filed, but never consummated. The mediator reported the case as settled, but

Respondent had withdrawn her agreement within 24 hours after mediation. (Ex. 7, 'Minute Entry.' p. 7).

Next, a court date was issued on August 17, 2007. The paramount issues presented at the trial included: visitation, custody, and financial support. The visitation issue was stipulated to in regard to parent-time with Appellee and Appellant. The embodied order and findings reserved joint legal custody, with Appellant maintaining primary physical custody (Ex. 3, 'Order Re: Verified Petition for Paternity, Custody, and Related Matters,' p.3, ¶ 6(a). In the findings of fact it was noted that Appellant was a resident of Grand County three months prior to commencement of this action, (Ex. 3, 'Findings of Fact and Conclusions of Law,' p. 5, ¶ 8); however, in the February 20, 2009 trial it was consummated that Appellant was not a resident of three months prior to present commencement of this preliminary action by Appellee, (Ex. 14, p. 1, ¶ 2). Financial issues relating to the August hearing were adjudicated by the court and are not relevant at this time.

Contained in the Order that followed the October 17, 2007 trial, and hearing on October 30, 2007, included: the court found that Grand County to be the county residence of the child (Ex. 3, 'Findings of Fact and Conclusions of Law,' p. 5, ¶ 8) and that the best interests of the child are to be protected by Appellant having the final say (Ex. 3, 'Findings of Fact and Conclusions of Law,' p. 5/6, ¶ 11), child

support was outlined with Appellee's income based at $5000.00 a month, and Appellant's income as $883 per month; and income information may be exchanged on a yearly basis and support begins August 2007 (Ex. 3, p. 6 ¶ 12). Appellee loaned Appellant $5100.00 representing advances in child support and other support and received a Judgment, (Ex. 3, p. 9, ¶ 21). However, it was not determined whether Respondent would receive child support which is past due.

In whether either party relocates UCA § 30-3-37 shall apply, (Ex. 3, p.10, ¶ 27), these findings shall survive and shall not be merged into any Judgment, decree, or order hereafter, (Ex. 3, p. 10, ¶ 29) and that the child may travel internationally at the age of 3 ½, (Ex. 3, p. 11, ¶ 30). Interestingly, this was already written into the order and not in objection on the October 30, 2007 hearing.

Subsequently, the parties were likely to agree on most issues, however if they disagreed Appellant would have the final say and Appellee could turn to the court for resolution, (Ex. 3, Huegley & Olsen, 'Order Re: Verified Petition for Paternity, Custody, and Related Matters,' p. 2, ¶ 4, ¶ 5). Appellee travels on a frequent and continual basis, (Ex. 3, C. Halls, 'Order Re: Verified Petition for Paternity, Custody and Related Matters,' p. 4, ¶ 8), and whether either party fails to perform his or her obligations under the Judgment the prevailing party in disputes in the exercise of joint custody may be required to pay all costs and attorney fees

incurred in this action, (Ex. 3, C. Halls, 'Order Re: Verified Petition for Paternity, Custody and Related Matters,' p. 7 ¶ 18).

In review of these final orders in question from 2007 for the appeal, it is important to emphasize that a submission of supplemental material was filed by Appellee's attorney, along with a parenting plan on October 15, 2007 that also requested another hearing. An objection was then filed by Appellant's attorney on October 24, 2007. The supplemental material was never consummated. A hearing was granted for a separate pleading in regard to inconsequential items that had no 'real' basis as they were predicted by the 'oral' conclusion from the court. That additional hearing occurred on October 30, 2007 to affirm what already occurred on August 17, 2007. This hearing reviewed the same issues that were consummated at the August 17, 2007 trial, and finalized the 'Order Re: Verified Petition for Paternity, Custody, and Related Matters' and the 'Findings of Fact and Conclusions of Law,' as set forth by Appellee's attorney. Appellant's attorney submitted a separate but almost identical 'Order Re: Verified Petition for Paternity, Custody, and Related Matters' and his 'Findings of Fact and Conclusions of Law,' (Ex. 7, 'Minute Entry,' p. 9 & 10) on October 30, 2007 in good faith upon the trial court's request.

In result of these orders and findings the court failed to apply the following: UCA § 30-3.10.3 (1), § 30-3-10.8 (1), § 30-3-11.3, and § 30-3-12. If the statutory guidelines had been applied before or at the hearing on August 17, 2007, or even afterwards, both parties may have saved both time and money pertaining to the litigation surrounding this outcome, and for the betterment of their relationship in parenting and with the minor child.

Four months later, Appellee's attorney filed a 'Petition to Modify Custody' on February 29, 2008. Again, Utah Rules of Civil Procedure and Utah Code annotated were ignored. The Petition to Modify made a false statement in asserting that 'Petitioner was granted access to the child as set forth in the Order and Parenting plan.' (Ex. 5, p. 1 ¶ 2). There was no Parenting Plan following October 30, 2007 submitted or included in the Order or Findings of Fact outlining such imperative issues as in a dispute resolution process, UCA S. 30-3-10.4 (1)(c)(i)(ii), (3), (4), (4). Circumstantially, nor was there a 'Parenting Plan' provided at the time for filing a modification of joint legal custody to sole custody, 'Petition to Modify,' (Ex. 7, p. 10). Consequently, there was no dispute resolution offered for the Appellant to defend her concerns and circumstances involved in Appellee's demand for custody. Joint legal custody was addressed in the 'Petition to Modify' as being 'logistically impossible.' (Ex. 5, p.2 ¶ 5). The 'Petition to

Modify' asserts that Appellant's role as primary physical custodian be relinquished to Appellee; in addition to severely minimizing Appellant's presence in the minor child's life. Various statements contained in the 'Petition to Modify;' in conjunction with Appellee's Affidavit filed on *February 29, 2008* are notably repetitive to Appelle's legal berating and harassing of Appellant. For example on *February 28, 2008* Appellant emailed to Appellee the first notice of moving from the Moab area (Ex. 4). Coincidentally, the 'Petition to Modify' was filed the next day, along with an Affidavit by Appellee that was signed on *February 29, 2008.* The email and 'notice' (Ex. 4) of moving did not suggest an immediate move, and certainly did not suggest a refusal to cooperate with Appellee on visitation or relocation. Nevertheless, on the same day of *February 29, 2008* yet another motion was filed, 'Motion to Review Parent Time and Costs and For Contempt.' Presented with this motion, Appellee requested a hearing to review additional expenses that may be imposed on Appellant of transportation after clearly noting Appellant's financial situation. Parent-time was requested to remain as is, otherwise UCA S. 30-3-37 (5-7) be issued. Erroneously, it targeted Appellant to be in contempt though no contemptuousness had had an opportunity to be committed yet? Appellant was in compliance with UCA S. 30-3-37, and proceeding with acknowledgement to her responsibilities to do so. The abusive

discretion in this request for a hearing warrants acknowledging UCA S. 30-3-10.4 (5). As referenced above in the August 2007 hearing, the issue of relocation was addressed and written into the Order and Findings as UCA S. 30-3-37. Creatively enough, an Order for a hearing was issued on *March 4, 2008* to determine transportation costs, visitation, and define parent time. Appellant was summoned and served to present answers for the Appellee's 'Order for a Hearing' on *March 20, 2008* (Ex. 5, 'Answers'), in which she answered. The next hearing occurred on *April 1, 2008* and granted Appellee another hearing to review the Petition to Modify on *May 6, 2008*. Finally, *but not really*, a hearing was set for *July 9, 2008* to decide whether a change of custody was warranted by a substantial change of circumstance with no circumstantial evidence.

Inside these four/five months revelating (4) hearings, there were several motions filed by both parties' attorney's. There were several legal arrows attacking the Appellant not in consideration of Appellant's cooperation with Appellee's parent-time. Aggresively, it was recited that Appellant was not cooperating, however, Appellee held a flag the entire stretch claiming he has spent up to 30/40/& 50 percent of additional time with the child. No evidence was provided that substantiated these contradicting approaches to abash Appellant, while attempting to validate his actions.

These motions and hearings caused undue financial, emotional and physical pressure through expediting and shortening time frames for responses that afflicted Appellant's attempts to maintain 'new' promising employment, settling in Salt Lake City, maintaining visitation with Appellee, and thereby reducing child support based on three weeks of new employment. Appellant wondered why the court order of August 2007 trial didn't really hold any weight? And, finally the motions and hearings achieved a most devastating impact on the best interest of the child by allowing the Appellee and the court to deny its original assessment of respecting its own decree of October 30, 2007, whereas, the court decided the custodian may make final decisions with regard to the child's best interest, including residence, and other factors that must be taken into consideration with UCA S. 30-3-10.3 (1)(a), (d), (6), (7).

The *July 9, 2008* hearing determined that a substantial change of circumstance had not occurred since the August 2007 hearing, (Ex. 6, p.1 (1). However, the court did indicate that child support would be modified based on Appellant's new employment of 2 months in less than 1 years' time from the August 2007 Order and changed its determination to $3633.00 per month for Respondent and $3583 for Petitioner. (Ex. 6, p.1 ¶ 2). This reduced child support immediately. The court also ruled that Appellee would be allowed to deduct an

additional $50.00 from child support because of an award of attorney's fees, (Ex. 6, p. 2, ¶ 3) that was recalled from one hearing to the next. The last issue resolved at this hearing was visitation that was outlined and stipulated to as usual. (Ex. 6, p. 2, ¶ 5).

Two months later Appellant's attorney submitted the 'Proposed Findings.' (Ex. 8, 'Order, (unsigned')). An objection was filed in response on *October 6, 2008*. (Ex.9). In addition to another 'Motion to set aside Agreement of 7/11/08. (Ex. 10). In pursuit of the onslaught, again on *October 6, 200 Petitioner's* counsel filed 'Petitioner's Affidavit in Support of Motion to Set Aside Agreement of 7/11/08,' 'Request for Trial Setting,' and 'Request for Hearing on Temporary Orders.' Appellant's attorney then responded with a 'Supplemental Memorandum to Motion to Stay Proceedings Submitted by Respondent' on *October 10, 2008.* (Ex. 11). In clearing the air, Appellant's attorney filed a 'Notice to Submit for Decision' on *October 22, 2008*. (Ex. 11). Neither, Notice to Submit pertaining to the floating order was recognized by the court with regard to Appellant's attempts. Although, another hearing was scheduled on *October 27, 2008* to determine the *November 18, 2008* for temporary orders. (Ex. 11).

Thereby, Appellant points to Ut. R. C. P. VI, 103, (a)(1). Under Ut. R. C. P. 74 (c), Appellant asserts that a 'Notice to Appoint New Counsel or Appear in

Person' was presented on October 24, 2008, however, an 'Order'' for another hearing was set for November 18, 2008, on October 27, 2008, and the recorded withdrawal on October 30, 2008. Appellant did not waive the time requirement for future proceedings to be held within 20 days after Notice to appoint New Counsel. Appellant was left with no opportunity to do so, considering that a court date was set and ordered before the actual withdrawal occurred. In conclusion, Appellee's attorney filed his motion premature to Appellant's attorney's withdrawal.

The *November 18, 2008* hearing provided consistent results with the *July 9, 2008* in addressing visitation, child support, and deductions. Thereby, granting another court date for hearing the merits in which Appellee presumes a substantial change of circumstance has occurred to award a change of custody. Trial is then set for *February 20, 2009*. (Ut. R. C. P. 502 (b)(1-4)(A)(B)(i)(ii)(iii), (C)(ii)).

According to the record this is the sixth hearing in less than 2 years from the verified order of August 2007 that sacrificed and prevailed that all resolutions will be resolved in a court room. (Ex. 3, C. Halls, 'Order Re: Verified Petition for Paternity, Custody and Related Matters,' p. 7 ¶ 18). In retrospect, it is alarming that the parent's only avenue recognized by the court in settling disagreements or accusations was to pay an attorney for a motion or pleading. Appellant is flabbergasted that the efforts she has provided in trying to keep up with Appellee's

attorney were not rewarded with at least one pleading for counseling, dispute resolution, or a parenting plan. It surely is in the child's best interest to have her parent's participate in remedies such as these, before a court appearance would be required to assure that the claims/accusations are indeed valid. (Ut. R. C. P. VI, 402). As it is, it is very difficult and time consuming and financially burdensome to argue testimonies of character when one parent, in short, simply may not appreciate of the other parent.

Appellant's attorney failed to respond to opposing counsel's request for discovery and appropriate sanctions in early 2009. The 'Order' arrived on *January 20, 2009* with another pleading for 'Motion to Shorten Time Memorandum,' and 'Petitioner's Second Set of Interrogatories and Requests Production of Documents' to Respondent. (Ex. 12). Yet, another overwhelming pleading for 'Expedited Motion to Compel Discovery and for Appropriate Sanctions' appeared on January 5, 2009, and then the 'Order' on January 20, 2009. (Ex. 12). Thereby, admitting evidence by default in a predicated 'Order' issued on *February 9, 2009*, Re: Expedited Motion to Compel Discovery, Memorandum, and for Appropriate Sanctions,' which is all reflective in the 'Findings of Fact.' (Ex. 15, p. 5, 18).

On *February 20, 2009* the court heard oral argument bifurcating the custody determination. The court did not make a ruling that day, and accepted written

closing arguments from both parties. Interestingly, the evidence listed on the "Exhibit List' of February 23, 2009, (Ex. 18) lacks an 'offered and received' notation where Appellee's counsel attempted to admit additional affidavits and motions to the court without following proper response time lines with Appellant's counsel. Thereby, depriving Appellant of due process.

This is especially important because in the Memorandum Decision of April 27, 2009 the court concluded this evidence and admitted 'new' evidence that was included in Appellee's closing argument that was not presented or available at the hearing in determining the custody issue, nor admitted. It is believed that the trial court judge accepted this evidence into his decision regarding whether a substantial change of circumstance had in fact occurred. (Ex. 14, p. 6, 2). Unjustly, it was not able to be contested by opposing counsel, or Appellant.

SUMMARY OF ARGUMENT

Before entertaining a motion to modify an existing custody order, the trial court must determine that "a material and substantial change of circumstances has occurred." UCA § 30-3-10.4 (1)(a)(c)(i)(ii). The trial court's finding that a substantial change had occurred rests primarily on Respondent's relocation from Moab to Salt Lake City, after the issuance of the October 30, 2007 custody order. Paragraph 20 of the 2007 Order states; "In the event that either party relocates,

UCA 30-3-37 shall apply." The trial court twice modified the parent-time schedule in order to accommodate the distance between the Parties and there was in fact no degradation of the relationship between Petitioner and the minor child. The trial court's orders of July 10, 2008 and November 18, 2008 made the joint custody arrangement both 'workable and appropriate under the circumstances.' *See Huish v. Munro*, 191 P.3d 1242, 125, (Utah App. 2008). There was no change of circumstances between these two rulings and the order terminating joint custody on April 7, 2009.

Accordingly, where the court made additional rulings throughout 2008, in evaluating a substantial change of circumstance it neglected to accommodate its original order for and in the best interest of the child (UCA § 30-3-10.4 (2)(a)(c), (3)(4)(5)). Whereas, visitation remained unchanged as the parties shared the cost of visitation before the move, and they shared the cost after the move. Petitioner's parent time remained unchanged and equal to that before the move. However, child support was affected significantly in reductions for both attorney's fees and new employment status. This surely was not in the best interest of the child.

Before terminating a joint legal custody order the trial court must also determine that the parties have utilized the appropriate dispute resolution procedure and that the modification is in the best interest of the minor child. (UCA

§ 30-3-10.3 (7)). The Parties did not engage in or certify to the trial court that they had unsuccessfully tried mediation to resolve the Petition to Modify, and none was ordered by the court. UCA § 30-3-10.4 (1)(c)(i)(ii)).

Similarly, the trial court failed to "give substantial weight to the existing joint legal custody order" or to "consider reasonable alternatives to preserve the existing order." UCA § 30-3-10.4 (2)(c) & (3). Rather, the trial court ignored the remedial affect of its two prior parent-time orders in July and November of 2008, which mitigated the impact of Respondent's relocation on the relationship between Petitioner and the minor child.

The trial court failed to adhere to other protective elements of the child custody scheme as well. Neither party was required to attend a parenting class. Petitioner's 'Petition to Modify' did not contain the mandatory parenting plan. UCA § 30-3-10.8. The trial court ignored the moderating objectives of the parenting plan requirement and in doing so failed to ensure that the best interests of the child were in fact served by tearing the minor child away from her life-long caregiver. UCA § 30-3-10.9 (1)(3)(4). Prior to the termination of all of Respondent's custodial rights, the minor child had resided exclusively with Respondent, from birth to the age of 5. Petitioner's care of the minor child was limited to periods of parent-time. (Ex. 3, p. 2, ¶ 2, p. 4, ¶ 8).

Given the utter lack of Petitioner's experience raising the minor child, the trial court's finding that it was in the minor child's best interests to terminate Respondent's custodial rights and the joint legal custody order were pure speculation. The trial court acknowledged that there was a question "whether the Father has the emotional flexibility to manage the roller coaster of raising a five year old child." (Ex. 14, p. 4 ¶ 1). By contrast, the trial court made no finding that the minor child was not "thriving, happy, or well-adjusted" for the five years she was in Respondent's care. UCA § 30-3-10.4(2)(c). Petitioner's counsel acknowledged this in his second set of interrogatories, just before the February 2009 hearing wherein it references an affidavit by Irma, the pre-school teacher, 'I need to add that Ariann is a caring, bright, and well-mannered child.' (Ex.13, 'Affidavit of Irma Martinez," p.4, (9))

The trial court's Finding holds many such contradictions. Collectively, the trial court permitted evidence which should have been rejected per U.R.C.P. 103 (1) (2)(d), Rule 502, 402, 403, 404, 608, 903. The trial court found that following Respondent's relocation to Salt Lake City, "[t]he parties negotiated an agreement for the Father to have less frequent, but longer, visits with Ariann and to share transportation costs," which is effectively what was contemplated by the October 2007 custody order; which states that UCA § 30-3-37 shall apply if either of the

Parties relocated. (Exhibit 3, Heugly & Olsen, 'Findings of Fact and Conclusions of Law, p. 7, ¶ 30). At the same time the trial court found that "[t]his move effectively made it impossible for the Father to exercise the generous parent time schedule agreed to in August 2007." (Ex. 5, p. 2, ¶ 5). The trial court's solution was to effectively destroy the maternal bond and stable relationship that the minor child had enjoyed her whole life. The trial court's findings are replete with such contradictions.

ARGUMENT

In observation of Appellant's attorney's closing argument Appellant submits an edited version with permissions from her counsel and evidence that is recognized in the record, in full. (Exhibit 23).

In accordance to Ut. R. C. P. 11. (e)(2), Appellant applies the following submittal of recollection of audio recorded evidence that is contained in the record and can be objected to if Appellee decides to provide for a court certified transcribed version, based on Appellant's impecuniosity. Appellant swears it is accurate and word for word.

The testimony verifies that Respondent has been brought to court for the residual effect of Petitioner's claims to the minor child.

Moreover, the testimony does not demonstrate a substantial change in Renee's circumstances that has negatively impacted her parenting ability or the functioning of the custodial relationship between Renee and Ariann.

There is no evidence that Renee is less of a parent to Ariann than when the original custody order was entered by this Court or that Ariann has been neglected in any shape, way, or form. There is evidence throughout the record that the child has had 2 years of pre-school and dance, and the benefit of having both parents' involved in her life openly.

It is distinguished that Renee long has had financial struggles. She has borrowed money from people. At times, she has repaid those loans and some of those loans remain unpaid. This factual circumstance existed prior to the entry of the custody order and continues to exist subsequent to the entry of the order.

1. Regarding: Money Borrowed by Respondent – August 2007

MR. HALLS: Alright so now we're to the point where…you gave her twenty six hundred dollars to pay her rent……

MR. CHILD: Yes, and more...

MR. HALLS: And part of the alternative if that didn't occur, what was your understanding of that the alternative…

MR. CHILD: She would go to Illinois, and that her, this was her, this is what

she said to me at the time, that the option was that she could get a free apartment that her mother would arrange because her Mother owns, a rental, a low income housing rental place and that she could live there for free, and that's what she was considering doing…if she didn't get that kind of help from me.

MR. HALLS: Has that been the indication, in other times when she's asked for help?

MR. CHILD: No, that was specific to that time in February.

MR. HALLS: So, your thought about that time was she's asking me for this money or your daughter will be taken to Illinois.

MR. CHILD: Yeah.

MR. HALLS: Um, alright, you've made a summary of…when you made these…approximately how much is the advances that you've made total?

MR. CHILD: Well, in two thousand and six… uh, you know my obligation, child support obligation is about was about forty eight, forty nine hundred dollars a year. But, I gave Renee, sixty eight hundred dollars approximately. In two thousand and six and then so far the beginning of two thousand six to right now…ah…I've given her um., sixty-seven hundred dollars in, and you know my obligation is more like thirty-two hundred dollars at this point. I mean I'm way ahead…and by Renee's own admission at the time when we had this conversation

in February, when she, wanted me to pay extra rent, to stay, here and all that? By her own admission, that even at that point I was paid up in child support, until right now, in fact until August she said august, and I've always given this money. Um, we've always had an anecdotal way of talking about it, as if it's an advance of the money I'm going to give you for child support in the future...Anyway, so that's why I've been doing it.

MR. HALLS: Alright so, I want to explore that for a moment. I was gonna ask you, ah, you've made a comment that you gave her some money for a car.? Down payment, car or to buy a car.

MR. CHILD: That I've considered as a gift.

MR. HALLS: Alright so there's... a coupled of different things?

MR. CHILD: That's that's about three years ago...

MR. HALLS: Your, you're considering them as gifts or loans and your considering some as advances on child support.

MR. CHILD: The, the two-thousand dollars for the car is the only thing I consider as a gift, she asked me for help to buy a good safe car to put Ariann in...I said yeah, okay, I'll do that. And, so I gave her a check for two-thousand dollars, and that was two thousand and five. I've never, never tried to recoup or deduct that from anything, that's, that's just there.

MR. HALLS: Alright, do you have documents…other materials from Renee that would indicate that she also treated this as an advance on child support?

MR. CHILD: Yeah, this, I do have a copy of this too. I've sourced checks and receipts that either Renee or I created that agreed to that really show, they kind of show a mish-mash of terminology…sometimes it says advance on child support…sometimes it says loan. You know it's always been regarded, whether it's in writing or in a conversation that these are advances in child support. I was in no position to keep gifting her thousands of dollars…I'm currently, by my calculation ahead at this day that we sit right here, by about fifty four hundred dollars.

.....

MR. HALLS: Okay, let me go on to something else. You indicated fifty nine thousand dollars as paid for the property. Is that the total amount for the property, or is that just your share.

MS. GLOBIS: That's the total amount for the property without interest.

MR. HALLS: So, your share of that was a quarter, fifteen thousand dollars roughly.

MS. GLOBIS: That doesn't include interest. A twenty year installment loan.

MR. HALLS: Of a hundred and...Are you up to date payments on that

property?

MS. GLOBIS: Up until June.

MR. HALLS: Have you been taken to small claims court by the other partners?

MS. GLOBIS: No.

MR. HALLS: Have you been threatened with that?

MS. GLOBIS: No.

.....

MR. HALLS: You were talking about...

MS. GLOBIS: I'm in the process of selling tha...trying to sell the land. That's the main reason, I was possibly, I'm working towards that.

MR. HALLS: You were talking about the twenty-six hundred dollars, twenty six hundred and sixty dollars that you say that that was absolutely a gift? There was never any conversation, or anything about that loan or advance on child support, remember that.

J. ANDERSON: Now, you've reached a stipulation about those claims, did you want to cover it. Can you give me a thorough background Mr. Olsen?

MR. HALLS: Well, Your Honor, I still want to convince the court I guess, that this this was child support or it was something and it goes to her credibility, (laughs). You remember that. Is that still what you want to say?

MS. GLOBIS: You'll have to repeat the question, cause...

MR. HALLS: You indicated, in no uncertain terms, that that was a gift...

8/17/07; 2:23 p.m.

MR. HALLS: ...given to you by Greg that he never expected payment. The twenty-six hundred and sixty dollars paid on your rent.

MS. GLOBIS: I have definitely indicated that after a certain point, like Greg said, you know the last time he wrote a child support check was in February, officially for four o nine. Everything beyond that we didn't discuss. I sent Greg an email, which is that document you have.

MR. HALLS: Alright, I'm talking about the twenty-six hundred and sixty dollars, specifically.

MS. GLOBIS: Right, there was no terms on how it would be paid back, whether it was a gift. I mean basically, he stopped giving me child support, but he was willing to pay a bill and was willing to pay my rent. So, I don't know, you tell me.

MR. HALLS: Do you remember under direct examination you said it was a gift, your Attorney asked you, and you said it was a gift. Was it a gift or was it a loan.

MS. GLOBIS: I think that's up to Greg.

MR. HALLS: What is your perception of what that was I want to know what you think?

MS. GLOBIS: My answer is up to Greg. I think he'll take me to court and if I don't know?

MR. HALLS: Your Honor, can I require the court whether you remember that testimony. I, I'm asking a simple question; I mean maybe you can instruct the witness.

J. ANDERSON: What do you mean instruct the witness, I want her to answer the question.

MS. GLOBIS: I did.

J. ANDERSON: Objection. The witness, herself is sustained. She has answered it, may not be satisfied with the answer…her answer.

MR. HALLS: Do you remember that's testifying a few moments ago, half an hour ago, that the twenty-six hundred dollars was a gift.

MS. GLOBIS: (sigh)

MR. HALLS: You don't.

MS. GLOBIS: You wrote it down; I've been asked alot of questions right now.

MR. OLSEN: I'm gonna object it's been asked and answered.

J. ANDERSON: Sustained. Let's go on. Let's go on. I happen to remember.

She did say it was a gift. She was under the oppression then too. But, pressed by her lawyer, she said 'gift.'

2. <u>Regarding Relocation – August 2007</u>

MR. HALLS: Alright, Ms. Globis, you made a comment, if you, if you weren't able to support yourself you would have to make a new life somewhere else. You stated that you told Greg that.

MR. OLSEN: Objection. That's beyond the scope of direct. She did not state that.

MR. HALLS: It can be beyond the scope of direct.

J. ANDERSON: I'm gonna allow it.

MR. HALLS: Did you basically tell him that you would make a new life somewhere else, that you would move with Ariann, if you didn't have the money that you needed here?

MS. GLOBIS: I'm doing the best I can here, if I think I can, if I get another job opportunity, if I can gain more profitable employment, more stable employment, I would. I would consider taking the offer and moving.

.....

MR. HALLS: Okay, Ms. Globis isn't it true that your, one of your contingencies for you to remain here is if you get enough money to remain here?

MS. GLOBIS: I wouldn't say that, no. I'd say, you know, I'm doing the best I can, and I'm hanging in there for now.

.....

MR. HALLS: That's not the question. Haven't you stated to him that if he could put up enough of the money for you to be able to pay your obligations here you would remain?

MS. GLOBIS: Absolutely not.

Regarding: Inheritence - August 2007

MR. OLSEN: K, so you received an inheritance, correct?

MS. GLOBIS: Yes.

MR. OLSEN: There's been some testimony that its approximately a hundred and fifty thousand dollars, Is that correct?

MS. GLOBIS: No.

MR. OLSEN: How much have you received in total cash from the estate in the past few years'?

MS. GLOBIS: Three.

MR. OLSEN: Three years.

MS. GLOBIS: About a hundred and twenty thousand.

MR. OLSEN: A hundred and twenty thousand, that a large sum.

MS. GLOBIS: Yeah.

MR. OLSEN: That's a large sum. What did you do with the money?

February 2009:

MR. HALLS: Did you ever tell Lindy McIlwaine that your inheritance was $240,000?

MS. GLOBIS: I did not ever get an inheritance of $240,000.

MR. HALLS: Have you ever told Lindy McIlwaine that you got an inheritance or that you received that $240,000?

MS. GLOBIS: I don't remember what I would have told her but Greg seems to tell everyone about that, so maybe she didn't hear it from me.

MR. HALLS: I think that's all I have....

Included in Greg's financial allegations regarding the reasons for change of custody, Greg has alleged that Renee received a substantial inheritance and squandered it away. Clearly, Renee disagrees with the assertion that she squandered the money away. Renee testified in February 2009 that she received $98,000.00 from her Uncle Joey's estate, and her

brother was entitled to one-half. She, also, received $43,000.00 from her Uncle Jerry's estate. The money did not come in a lump sum, it came in pieces. In addition, she was required to send some of that money in order to collect the additional amounts. Renee testified that she paid at least $30,000.00 to attorneys for costs and fees involved in the litigation with Greg, she was required to purchase a house full of furniture when she moved from Greg's home, she had to provide for her daughter without financial support from Greg, plus she shared money with family, purchased a car for her mother, purchased a computer and paid for many other necessities. Again,, there was in fact no imminent grounds to suggest that a substantial change of custody had occurred in relinquishing the existing custody decree. (UCA § 30-3-10.4 (5).

Most importantly, the inheritance was received throughout 2005. Thus, she received the funds prior to the entry of the custody order. This cannot be considered as a basis for determining that there has been a substantial change of circumstances since entry of the custody order. These financial situations were clearly acknowledged with the motions leading to the hearing on February 2008. (Exhibit 10, p. 6 ¶ 18 & ¶ 19). The trial court

Judge could not have constituted a material and substantial change of circumstances that has occurred since entry of the custodial order.

In this matter, Greg, also, attempts to use Renee's employment situation as a basis for the change in circumstances. The testimony, however, demonstrated that Renee has been doing architectural drafting as long as she has known Greg. Again, both before and after the custody order. (Ex. 2, p. 2 ¶ 8 & ¶ 9)).

Further, Renee's employment status is the same as it was prior to entry of the order awarding custody to Renee, and subsequently. Moreover, her employment situation does not constitute a substantial change of circumstances which has negatively impacted her parenting ability or the custodial relationship between Renee and Ariann.

Regarding Employment – August 2007

MR. OLSEN: Where do you work?

MS. GLOBIS: I am a freelance architectural draftsperson and design.

....

MR. OLSEN: How often do you work?

MS. GLOBIS: As much as I can.

3. February 2009

Mrs: Flanders: What have you done to look for more work?

Renee: In December I established my own company, Global Designs and Drafting, up in Salt Lake, that had a business license and had every intention to seek work with that and provide the same services I was in Moab, up in Salt Lake.

Greg asserts that the move from Moab to Salt Lake City satisfies the change of circumstances requirement. It simply is not legally or factually sufficient to base a determination to reopen the custody question. First and foremost, to be legally sufficient, the change in circumstances must be subsequent to the custodial order and must not have been within the contemplation of the parties. Although the Findings designate Grand County as Ariann's residence, the Findings and Decree clearly contemplate a potential move of one of the parties.

In addition, during the cross examination of Greg, the following occurred:

Flanders: Mr. Child, you state that you were completely surprised by the idea that Renee would move from Moab. I'm going to show you a document, I haven't marked it as an exhibit but I'm going to ask you if you recognize it and if it's your signature on the next to the last page. May I approach, your Honor?

Judge: You may.

Child: This is a Stipulation that Rose Riley created, in 2005. What do you want me to say?

Flanders: Is that your signature on the next to the last page?

Child: It is my signature yes.

Flanders: And is that your handwriting?

Child: Yes, but you know, this never went anywhere.

The potential move from Moab by Renee was contemplated early in these parties' relationship and, thus, was acknowledged in the Findings and the Order. The evidence demonstrated that Renee is from Chicago and her family currently resides in Chicago. During her pregnancy, Renee went to Chicago for an extended time period and returned only when she determined that it would be best for her soon-to-be-born child to try to remain in close proximity to the child's father. Upon Renee's return to Moab, she moved into Greg's home for only a few months. Further, Renee was in and out during that time period due to the acrimony in the relationship between Renee and Greg. The testimony demonstrated that she lived in Greg's home, then moved into a friend's home, and then moved into a home that she rented.

4. Regarding: Credibility of Witness – August 2007

MR. OLSEN: Are you concerned that in making these decisions that Greg will substitute his desires for yours.

MS. GLOBIS: He will overpower me in every situation.

MR. OLSEN: Has that been the history in the past.

MS. GLOBIS: Yes.

MR. OLSEN: Do you think that will continue in the future?

MS. GLOBIS: Yes, because…

MR. OLSEN: Why?

MS. GLOBIS: Because that's the way everything has been with Greg, every time I say…it seems like every time I say, make a comment he twists it around and manipulates what I've said, and says it back to me…in a completely opposite direction of what I've said. And, it's really frustrating cause I'm just trying to communicate with him and he can't, he can't, just speak to me like candidly, and straightforward.

MR. OLSEN: What about Greg's travel how do you think that will affect your ability, you and Greg, to make decisions?

MS. GLOBIS: I think it's very difficult to make decisions on a daily basis, or even a monthly basis, in his case of absences where he is often times gone...

MR. OLSEN: Has he been a problem in the past?

MS. GLOBIS: Yes. There's, it's um…

MR. OLSEN: When was the last time Ariann went to the ER?

MS. GLOBIS: She well, ER was last winter.

MR. OLSEN: Was Greg there with you?

MS. GLOBIS: He was in Australia.

MR. OLSEN: Okay, when was the last time that Ariann was really sick and had to go to the doctor?

MS. GLOBIS: Um, that was in…last winter also, um, December was ER and January was really sick and went to the doctor.

MR. OLSEN: What was wrong with her?

MS. GLOBIS: In December she had, um, strep throat, and then in January she had some congestion, um, worrying me about breathing.

MR. OLSEN: Was Greg present when these…

MS. GLOBIS: I'm sorry?

MR. OLSEN: Was Greg present during these doctor visits?

MS. GLOBIS: No, no.

……

MR. OLSEN: You ready Renee? May I remind you that you are under oath, okay? (pause) Let's pick off, ah, pick up where we left off. In your opinion, why will joint legal custody not work in this situation?

MS. GLOBIS: Uh, sorry. Joint legal custody is not to the benefit of Ariann. From my perspective, of being her Mother, and dedicating everything I have to

my daughter. I feel it's extremely difficult to work with Greg, as/on a joint legal arrangement for making decisions with Ariann, because of his absence.

MR. OLSEN: What do you mean?

MS. GLOBIS: When he travels.

MR. OLSEN: What effect does that have on you and Ariann?

MS. GLOBIS: His lack of, his lack of knowledge of what's been going on. And, having to bring him up to date with the recent things that Ariann's been doing. He skips entire periods of time. It's difficult to/for him to make decisions with equanimity that are equal, of equal value, and I think that a...

MR. OLSEN: Okay, when Greg addresses an issue with Ariann, okay, characterize to the court which end of the spectrum he's on. One, he ah, he gets hyperbolic about problems, and two he under-minimizes things. Where is he at in that spectrum?

MS. GLOBIS: He minimizes all her problems. He basically says that he, most things I bring up as an issue, he brings them off as non-issues. Just states that he's not worried about it. And, often times, there's lack of communication on any issue, as well as, lack of his presence. And that. It is so important that you be present, as a father. To be like, to be...I think being present as a Father is everything to our children, and I think there's a huge value in that. I think that, I

think that Greg hasn't experienced like a complete dedicativeness to Ariann in that respect.

MR. OLSEN: Where do you work?

MS. GLOBIS: I am a freelance, architectural draftsperson and design.

MR. OLSEN: Do you have a degree.

MS. GLOBIS: No.

The parties obtained attorneys when Ariann was approximately five months old. They have been in litigation since early 2005. The move from Moab clearly was within the contemplation of the parties before entry of the custody order.

Greg did present some testimony regarding hostile behavior on the part of Ariann. Again, this could not support a finding of a change of circumstances or even that it is in Ariann's best interests for this Court to change custody. It cannot provide such support because the evidence demonstrates that this behavior only occurs when Ariann is with Greg or is in his care. Renee clearly testified that she had not seen such behavior. The other witnesses testified that they had seen this behavior when Ariann was in Greg's care.

5. Re: 'Mother's relationship with child'- August 2007

MR. OLSEN: Does she have a set routine, in her day?

MS. GLOBIS: She does at home. Yeah, I've kept her on, ya know, routines.

MR. OLSEN: And, how does it impact Ariann, when Greg comes into town and begins to see her again?

MS. GLOBIS: Uh, its, there's no more routine. She, she, she often comes back, and she doesn't listen, it takes her a little while to um, get back into the, um, I guess…

8/17/07; 11:39 a.m.

MS. GLOBIS: …it's an adjustment with just being back at home because it's just very, very different from, I don't, I'm not familiar with what Greg does with her at his house, but from what her routine is at home, it's just two different for her and I think it takes her a little while to realize where she's at again...and…

MR. OLSEN: Is she the sort of child that needs structure, or is that not as important to her?

MS. GLOBIS: I think all children need structure and I definitely think's she needs structure. She does so much better, when I've had her in daycare, she's going to the same provider. She loves daycare. And she gets very, ya know, the daycare provider's love her too, cause she's generally, she's really social, she loves other kids and she likes the routine. She likes being involved, like a sit down meal with other kids, and the whole thing, like she's, she definitely

gravitates to it.

MR. OLSEN: Okay.

MS. GLOBIS: I think she definitely gravitates to it.

.....

MR. OLSEN: Ok, but Renee hasn't actually sought to keep Ariann from you, isn't it true that she's actually come into town and actually tried to facilitate a good relationship between you and Ariann. Wouldn't you agree with that?

MR. CHILD: By and large we stick to the days we agreed that I'll see Ariann.

MR. OLSEN: Would you agree that she has worked to facilitate a good relationship with you and Ariann.

MR. CHILD: Yeah.

MR. OLSEN: Does Ariann have her own bedroom at your home.

MR. CHILD: No.

MR. OLSEN: Does she have her own bed to sleep in.

MR. CHILD: No, she sleeps with both parents in their own bed.

MR. OLSEN: Earlier in your testimony you said that you and Renee can agree on just about everything correct?

MR. CHILD: About the child?

MR. OLSEN: Correct.

MR. CHILD: Yeah.

MR. OLSEN: Ok, have you ever had disagreements about whether Ariann should be in pre-school or daycare?

MR. CHILD: No.

MR. OLSEN: Is it true that in February you and Renee had had an argument or not, whether she should be in daycare or preschool?

MR. CHILD: No.

If the Court determines that Greg has proven a substantial change in Renee's circumstances that has affected her parenting ability, which we believe the Court should not so find, then the Court should look to the best interests of Ariann. In doing so, a significant factor to be weighted is the importance of maintaining a long standing custodial relationship.

In this case, Renee always has had custody of Ariann. In fact, Ariann lived in Greg's home from her birth in August 2004 until October or November, 2004. At most, three months. Ariann is five years old. Other than testimony from a few witnesses that Ariann has exhibited aggressive behavior when in Greg's care, the balance of the testimony is that Ariann is happy, well bonded with her mother, is learning her alphabet, is learning to read, enjoys significant time and activities with her mother and is a happy child.

The testimony, also, demonstrated that Ariann enjoys time and activities with her father, is a happy child, but, at times, exhibits violent behavior when in his case.

pertinent facts - Greg's acknowledgment of the stipulation prepared by his attorney and his hand writing;

evidence that Ariann has exhibited some negative behavior, but only when she has been with Greg - no evidence that it has occurred when she was with Renee;

the Decree clearly contemplates a potential move by either party and applies 30-3-37 to any such move;

The evidence regarding debt obligations shows the same circumstances existing before entry of the decree and after - thus, not a change in circumstances;

There was no evidence proving that a change in circumstances has occurred that has materially and substantially affected Renee's parenting abilities or the functioning of the custodial relationship between Renee and Ariann;

The Court did make findings of fact to support its determination of custody and parent time - Greg has not proved a substantial change of circumstances to any of those findings that negatively affect Renee's parenting ability or the existing custodial relationship between Renee and Ariann;

Conclusion

There are various grounds for basis of Appellant's appeal. First, the decree that designates Sole Physical and Legal Custody to Appellee. Appellant has mustered all of the evidence of the trial court's decree and all that is recorded in the record for a finding that fails to constitute dissolution of a Mother's rights, and fails in preservation of the standards of Utah Code Annotated and Utah Civil Procedural Rules, Rules of Evidence. This case has unfairly distributed custody of Respondent's minor child by failing to apply even the foremost resolution options, in which has created an extremely confusing and expensive course for raising a child between two parents who never married. (UCA § 30-3-12).

Secondly, the current custody order and findings were not offered to Appellant's attorney for adequate review, before the order and findings were presented to the court. In result, the court refused to accept Appellant's objection to those findings and order even though they were recognized by U. R. C. P. Rule of Evidence 103 (2)(d), Rule 201(11), & 403 with objection about the use of evidence in a timely manner after an Order was issued. Questionably, the Respondent's objection was entered into the record the next day of the 'Order' being signed. However, on an earlier occasion the court did accept an affidavit and motion to set aside the agreement from the July 9, 2008 hearing, while the court ignored Utah Rule of Evidence 103 (2). In addition to the request for Notice to

an unjustified and unprepared court date of November 18, 2008 for Appellant. Finally, asserting the lack of concentration with this case is that '...the court moved to reopen the hearing in March 2009, so that Petitioner could present additional evidence demonstrating that Mother lied when she testified about the status of her child care arrangements for Ariann at the Montessori pre-school in the Salt Lake City area.' (Ex. 14, p.6 ¶ 2,); that was unjustified.

The court also ignored a very important rule in this case concerning the credibility of the Respondent's testimony. The answers in which Petitioner's counsel persistently asked regarding determination of Respondent's wages were readily and easily accessed. Therefore, Petitioner's counsel asked questions to Respondent to deny her validity as a witness when there are two things that hold true. Petitioner's counsel could have retrieved the necessary information himself by making a phone call to the employer, or simply acknowledged and accepted the evidence that was submitted and accepted with the court that described Respondent's wage. The testimony of the Respondent is accurate and is reflected in the evidence and record. Conclusively, this arbitration of testimony to try to consider the Respondent as a non-credible witness is considered abusive in itself. (Rule 903).

Incidentally, the testimony at any of the six trials in 2 years' time did not support a finding that the Appellee was deprived of his visitation or any default on

the part of the Appellant for not following court orders and procedure in regards to their child or court orders. There is not one stroke of evidence to authorize that Appellant have her UCA 30-3-10 removed and displaced to a Paternal Father that did not want the child and vehemently attacked Appellant since the decision Appellant made to have the child, 'They did not initially agree whether it was wise for Mother to have a baby. (Ex. 14, p.1 ¶ 1).

Statement of Relief Sought

On appeal, Appellant seeks reversal of the order and enforcement of the UCA 30-3-10, which includes mediation with the Court of Appeals as the next immediate order presuming Appellee decides to adhere to Utah Code and Regulations of Paternal rights and privileges.

Appellant, therefore, requests, this case be transferred to Salt Lake County, which has been the county of residence for the child and Respondent for a period of 2 years to date.

Appellants' foremost concern is her child's emotional and psychological affect of the withdrawal of Appellant from the minor child's life and their relationship that they shared without any affects of financial hardships so stark that the child went without food, clothing, or good home. Appellant has protected the minor child from abuse her entire life, and Appellant is now empty handed with the choices the trial court has made. The minor child has always been recognized

minor child from abuse her entire life, and Appellant is now empty handed with the choices the trial court has made. The minor child has always been recognized through the trial's and testimony's as being a healthy, happy, child, (Ex. 13, 'Affidavit of Irma C. Martinez,' p. 4, No.9). The trial court has permitted and impacted an innocent child with a cost that even Appellee cannot afford.

Appellant begs the court to consider the impact on the minor child with regard to UCA Guidelines that were drawn up for both parents to have a beautiful relationship with the child, whereas, the parents must accommodate their lives and priorities to accommodate one another for the interest of their child. Appellant has strived to do this from day one so long as Appellee was willing. Appellant has stipulated to all Appellee's request's regarding visitation, (Ex. 16, 'Affidavit of Irma Martinez,'p. 4, No. 8), (Ex. 6, p. 2, (5), financial, (Ex. 6, p. 2, (3), (Ex. 14, p. 10, (3), and countless other exhibits. However, Appellant is now destitute with financial obligations, and sold all of her assets in order to maintain a right that she believes cannot be exchanged for money.

The court has not only exhausted Appellant's resources in defending her parental rights, but has mistakenly advocated Appellee to dominate the parental relationship; therefore, disrespecting the law and otherwise manipulating and abashing the Appellee for all that she has done for the minor child, (Exhibit 15,

(Exhibit 19 & 20, 'Expedited 'Exparte' Motion for Writ of Assistence and Affidavit in Support of Motion for Writ of Assistence, both on April 30, 2009)

(Exhibit 21, 'Notice of Entry of Orders,' May 4, 2009)

(Exhibit 22, 'Writ of Assistence,' May 1, 2009)

Appellant believes that her child has been subjected to undue duress regarding the 'Writ of assistance.' (UCA § 30-3-10.4 (5), § 30-3.10.10 (3, 4). The primary victim is the minor child in a situation like this with little room for Appellant to react and digest the sacrifice of her child to a Father that she does not understand why he would pursue such an aggressive approach to claim custody with no evidence or history prevalent in this case thus far. Sadly, for the child there was no parenting plan submitted with the change of custody and the court gave no respect to the child in the dramatic altercation of her existing life with her Mother as she was whisked away to her Father. Though, police reports show no violence or abusive behavior by either party it is subject to the child's interpretation of her father's authority and approach in presenting Respondent as a victimized Mother. This aggressive approach to gain custody has allowed Petitioner to embark on enforcement of third party exchanges with police every time the minor child has visitation with the Mother. For this acknowledgement Appellant seeks an order for counseling to be provided for the parents and funded by Appellee.

Appellant also seeks an award of all of Appellant's fees and costs incurred in defending Appelant from Appellees' initial Verified Petition for Paternity, Custody, and Related Matters that has now escalated to Appellant's appeal.

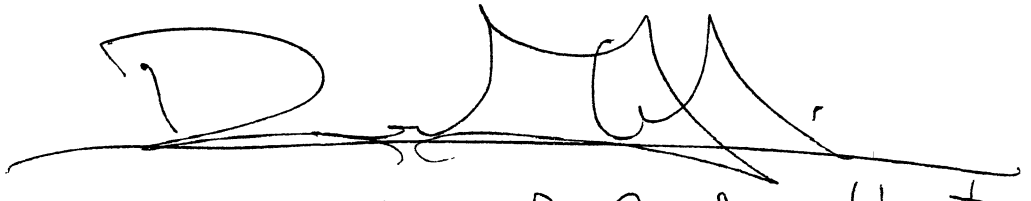
Appellant prays the Court of Appeals will adhere to the injustice that has been proven in this case and apply the corrections as necessary. Thank you for the honor of Pro Se Representation in this case involving my daughter.

time the minor child has visitation with the Mother. For this acknowledgement Appellant seeks an order for counseling to be provided for the parents and funded by Appellee.

Appellant also seeks an award of all of Appellant's fees and costs incurred in defending Appelant from Apellees' initial Verified Petition for Paternity, Custody, and Related Matters that has now escalated to Appellant's appeal.

Appellant prays the Court of Appeals will adhere to the injustice that has been proven in this case and apply the corrections as necessary. Thank you for the honor of Pro Se Representation in this case involving my daughter.

Date: January 26, 2010



Renee Glabis, Pro Se Appellant